

DO/ISS 77-291

1 September 1977

MEMORANDUM FOR: Assistant for Information, DDA

STATINTL

FROM: [REDACTED]

Chief, Information Services Staff, DO

SUBJECT:

H.R. 8279 - Amendment to Privacy Act  
of 1974

1. I have recently received a copy of H.R. 8279 (95th Congress, First Session) to amend the Privacy Act of 1974. I feel the proposed changes are serious enough to merit an early alert to your office that CIA needs to make a detailed study of the implications of the proposed amendment to the Privacy Act. This need stems from the apparent omission from the proposed amendment of the general exemptions available to the Central Intelligence Agency under 5 U.S.C. 552a(j). The general exemption just quoted embraces the concept of protecting intelligence sources and methods from unauthorized disclosure. The omission of such a fundamental concept in the proposed amendment is of concern to the entire Agency as well as to the Directorate of Operations. We are also concerned with the apparent changes regarding the routine use of records and with the provisions dealing with conditions of disclosure.

2. I have not attempted to make a detailed comparison between the proposed amendment and the current law; however, my staff is available to give advice and guidance regarding Directorate of Operations equities vis-a-vis the proposed amendment.

[REDACTED] STATINTL

ADMINISTRATIVE - INTERNAL USE ONLY

STATINTL

Approved For Release 2002/05/07 : CIA-RDP80-00473A000700040002-3

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95TH CONGRESS  
1st Session

H. R. 8279

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IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1977

Mr. GOLDWATER (for himself and Mr. Koch) introduced the following bill;  
which was referred to the Committee on Government Operations

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A BILL

To amend the Privacy Act of 1974.

1       *Be it enacted by the Senate and House of Representa-*

2       *tives of the United States of America in Congress assembled,*

3       SECTION 1. Section 552a of title 5, United States Code,

4       is amended to read as follows:

5       **§ 552a. Information maintained on individuals**

6           (a) **DEFINITIONS.**—For purposes of this section—

7              “(1) the term ‘agency’ means agency as defined in  
8              section 552 (e) of this title;

9              “(2) the term ‘individual’ means a citizen of the  
10         United States or an alien lawfully admitted for perma-  
11         nent residence;

1                 “(3) the term ‘record’ means any item, collection, or  
2                 grouping of information about an individual including,  
3                 but not limited to:

4                 “(A) normal directory information, such as  
5                 the individual’s name, address, telephone number,  
6                 business address, or similar information,

7                 “(B) other numbers, symbols, fingerprints,  
8                 voiceprints, photographs, or identifying particulars  
9                 assigned to, or associated with, the individual,

10                 “(C) information relating to the individual’s  
11                 background, education, finances, health, criminal  
12                 history, or employment history, or

13                 “(D) any other attributes, affiliations, or char-  
14                 acteristics associated with, or assigned to, the  
15                 individual;

16                 “(4) the term ‘individually identifiable record’  
17                 means a record which could be reasonably expected to  
18                 directly or indirectly identify the individual or individ-  
19                 uals to whom it pertains;

20                 “(5) the term ‘statistical record’ means a record  
21                 which is collected or maintained by a Federal agency or  
22                 pursuant to a Federal research contract or grant, or a  
23                 subcontract thereof, for a research or statistical reporting  
24                 purpose only and which is not used, in whole or in part,  
25                 in individually identifiable form, to make any decision or

1       to take any action directly affecting the individual to  
2       whom the record pertains (except within the context of  
3       the research plan or protocol or as provided by section  
4       8 of title 13) ;

5           “(6) the term ‘accessible record’ means an individ-  
6       ually identifiable record, except a statistical record,  
7       which is:

8           “(A) systematically filed, stored, or otherwise  
9       maintained according to some established retrieval  
10      scheme or indexing structure and which is, in prac-  
11      tice, accessed by use of, or reference to, such retrieval  
12      scheme or indexing structure for the principal pur-  
13      pose of retrieving the record, or any portion thereof,  
14      on the basis of the identity of, or so as to identify,  
15      an individual, or

16           “(B) otherwise readily accessible because:

17           “(i) the agency is able to access the record  
18       without an unreasonable expenditure of time,  
19       money, effort, or other resources, or

20           “(ii) the individual to whom the record  
21       pertains is able to provide sufficiently specific  
22       locating information so as to render the record  
23       accessible by the agency without an unreason-  
24       able expenditure of time, money, effort, or  
25       other resources;

1           “(7) the term ‘system,’ or ‘subsystem,’ means any  
2           collection or grouping of accessible records as defined by  
3           paragraph (6) (A) of this subsection;

4           “(8) the term ‘maintain’ includes collect, obtain,  
5           maintain, possess, process, use, disseminate, or disclose;

6           “(9) the term ‘routine use’ means the use or dis-  
7           closure of an individually identifiable record for a  
8           purpose which is:

9           “(A) compatible with the purpose for which  
10          the information in the record was collected or  
11          obtained, and

12          “(B) consistent with the conditions or reason-  
13          able expectations of use and disclosure under which  
14          the information in the record was provided,  
15          collected, or obtained; and

16          “(10) the term ‘collateral use’ means the use or  
17          disclosure of an individually identifiable record for a  
18          purpose which:

19           “(A) would not be considered a routine use  
20          as defined by paragraph (9) of this subsection,  
21          and

22           “(B) is specifically authorized by statute:

23           *Provided*, That such statute:

24           “(i) was enacted after January 1, 1975,

25           and

"(ii) establishes specific criteria for the use or disclosure of specific types of information.

3        "(b) ACCESS TO RECORDS.--Each agency that main-  
4 tains accessible records shall make those records available to  
5 the individuals to whom they pertain as follows:

6           “(1) Except as provided under paragraphs (3)  
7       and (5) of this subsection, each agency that maintains  
8       an accessible record shall, upon receipt of a request which  
9       reasonably describes such accessible record from the  
10      individual to whom it pertains:

11                 “(A) After receipt of satisfactory assurance  
12                 that the requesting individual is who he purports to  
13                 be—

14                         “(i) make such accessible record, or a copy  
15                         of all or any portion thereof, available to that  
16                         individual in a form which is comprehensible to  
17                         him and which reflects, as accurately as can be  
18                         reasonably expected, the context or manner in  
19                         which the agency maintains and uses that  
20                         record;

21                         “(ii) to the extent that the agency can be  
22                         reasonably expected to be aware of substantially  
23                         similar or derivative versions of such accessible  
24                         record which it maintains, and to the extent  
25                         that such substantially similar or derivative ver-

1           such substantially similar or derivative versions  
2           of such accessible record, or a copy of all or any  
3           portion thereof, available to that individual in  
4           a form which is comprehensible to him and  
5           which reflects, as accurately as can be reason-  
6           ably expected, the context or manner in which  
7           the agency maintains and uses that record.

8           “(B) Upon request by an individual who has  
9           been granted access under subparagraph (A), the  
10          agency shall provide the individual with an ac-  
11          counting of the actual uses and disclosures made  
12          of such record within a reasonable period of time  
13          prior to the request as follows:

14           “(i) The agency shall provide the individ-  
15          ual with an accounting of all of the prior recip-  
16          ients of such record to whom the agency could  
17          be reasonably expected to propagate a correc-  
18          tion pursuant to paragraphs (1) through (4)  
19          of subsection (f).

20           “(ii) The agency shall provide the individ-  
21          ual with an accounting of any other prior  
22          recipients of such record of which the agency  
23          could be reasonably expected to be aware but to  
24          whom the agency could not be reasonably ex-

1           pected to propagate corrections pursuant to such  
2           paragraphs.

3           “(iii) In providing the accounting pursuant to divisions (i) and (ii) of this sub-  
4           paragraph, the agency shall take reasonable  
5           affirmative steps to inform the individual, in a  
6           form comprehensible to him, of:

7           “(I) the date, nature, and purpose of each  
8           disclosure, and

9           “(II) the name and address of the person  
10          or agency to whom the disclosure was made.

11          “(2) When an agency grants an individual access  
12          to an accessible record or an accounting of the uses and  
13          disclosures of such record pursuant to paragraph (1) of  
14          this section, the individual to whom the record pertains  
15          may, upon his request, be accompanied by a person of  
16          his own choosing, except, that the agency may require  
17          the individual to furnish a written statement authorizing  
18          discussion or disclosure of that individual's record, or its  
19          uses and disclosures, in the accompanying person's  
20          presence.

21          “(3) Nothing in this section shall be construed as  
22          requiring an agency to grant an individual access to in-  
23          formation within a record which is:

1                 “(A) (i) specifically authorized under criteria  
2                 established by an Executive order to be kept secret  
3                 in the interest of national defense or foreign policy,  
4                 and

5                 “(ii) is, in fact, properly classified pursuant to  
6                 such Executive order;

7                 “(B) investigatory information compiled for  
8                 law enforcement purposes, but only to the extent  
9                 that the production of such information would:

10                 “(i) interfere with enforcement proceedings;

11                 “(ii) deprive a person of a right to a fair  
12                 trial or an impartial adjudication;

13                 “(iii) constitute an unwarranted invasion  
14                 of personal privacy;

15                 “(iv) disclose the identity of a confidential  
16                 source and, in the case of a record compiled by  
17                 a criminal law enforcement authority in the  
18                 course of a criminal investigation, or by an  
19                 agency conducting a lawful national security  
20                 intelligence investigation, confidential informa-  
21                 tion furnished only by the confidential source;

22                 “(v) disclose investigative techniques and  
23                 procedures; or

1                         “(vi) endanger the life or physical safety  
2                         of law enforcement personnel;

3                         “(C) contained in or related to examination,  
4                         operating, or condition reports prepared by, on  
5                         behalf of, or for the use of an agency responsible  
6                         for the regulation or supervision of financial  
7                         institutions;

8                         “(D) information compiled in reasonable  
9                         anticipation of civil action or proceeding;

10                        “(E) investigatory material compiled solely  
11                        for the purpose of determining suitability, eligibility,  
12                        or qualifications for Federal civilian employment,  
13                        military service, Federal contracts, discretionary  
14                        Federal grants, or access to classified information,  
15                        but only to the extent that the disclosure of such  
16                        material would reveal the identity of a source who  
17                        furnished information to the Government under an  
18                        express promise that the identity of the source would  
19                        be held in confidence, or, prior to September 27,  
20                        1975, under an implied promise that the identity  
21                        of the source would be held in confidence;

22                        “(F) testing or examination material used  
23                        solely to determine individual qualifications for  
24                        appointment or promotion in the Federal service

1           the disclosure of which would compromise the  
2           objectivity or fairness of the testing or examination  
3           process;

4           “(G) evaluation material used to determine  
5           potential for promotion in the armed services,  
6           but only to the extent that the disclosure  
7           of such material would reveal the identity of a  
8           source who furnished information to the Govern-  
9           ment under an express promise that the identity of  
10          the source would be held in confidence, or, prior to  
11          September 27, 1975, under an implied promise that  
12          the identity of the source would be held in  
13          confidence; or

14           “(H) authorized by statute to be withheld  
15          from the parent or legal guardian of the individual  
16          to whom the information pertains and the requesting  
17          individual is, in fact, the parent or legal guardian of  
18          the individual to whom the information pertains.

19           “(4) Any reasonably segregable portion of an  
20          accessible record shall be provided to any individual  
21          requesting such record pursuant to paragraph (1) (A),  
22          (1) (B), or (1) (C) of this subsection, and any rea-  
23          sonably segregable portion of the accounting of the  
24          uses and disclosures of such record shall be provided to

1       any individual requesting such accounting pursuant to  
2       paragraph (1) (D) of this section, after deletion of the  
3       portions which are exempt under this subsection.

4           “(5) While it may not deny access to an accessible  
5       record to the individual to whom the record pertains,  
6       except as provided in paragraph (3) of this subsection,  
7       an agency may establish special procedures for the dis-  
8       closure of information pursuant to paragraph (1) of this  
9       subsection if the agency believes that the disclosure of  
10      such information would adversely affect the health of  
11      the individual to whom it pertains or the safety of any  
12      other individual.

13           (e) AMENDMENT OF RECORDS.—Each agency that  
14       maintains accessible records shall permit the individuals to  
15       whom the records pertain to request amendment of those  
16       records as follows:

17           “(1) When an individual has been granted access  
18       to an accessible record, or a substantially similar or  
19       derivative version thereof, pursuant to subsection (b)  
20       (1) of this section, the agency shall also permit that  
21       individuals to request amendment of that record, or the  
22       substantially similar or derivative versions thereof,  
23       and—

24           “(A) not later than 10 days (excluding Satur-

1           days, Sundays, and legal public holidays) after the  
2           date of receipt of such request, acknowledge in writ-  
3           ing such request; and

4           “(B) promptly, either—

5           “(i) make any correction of any portion  
6           thereof which the individual believes is not  
7           accurate, relevant, timely, or complete; or

8           “(ii) inform the individual of its refusal to  
9           amend the record, or the substantially similar  
10          or derivative versions thereof, in accordance  
11          with his request, the reason for the refusal, the  
12          procedures established by the agency for the  
13          individual to request a review of that refusal by  
14          the head of the agency or an officer designated  
15          by the head of the agency, and the name and  
16          business address of that official.

17          “(2) The agency shall permit the individual who  
18          disagrees with its refusal to amend his record, or the  
19          substantially similar or derivative versions thereof, to  
20          request a review of such refusal, and not later than 30  
21          days (excluding Saturdays, Sundays, and legal public  
22          holidays) from the date on which the individual requests  
23          such review, complete such review and make a final  
24          determination unless, for good cause shown, the head of

1           “(3) If, after the review made pursuant to para-  
2       graph (2) of this subsection, the reviewing official also  
3       refuses to amend the record, or the substantially similar  
4       or derivative versions thereof, in accordance with the  
5       individual's request, the agency shall--

6           “(A) permit the individual to file with the  
7       agency a concise statement setting forth the reasons  
8       for his disagreement with the refusal of the agency,  
9       and

10          “(B) notify the individual of the provisions for  
11       judicial review of the reviewing official's determina-  
12       tion under subsection (k) of this section.

13          “(4) In any disclosure which contains information  
14       about which the individual has filed a statement of dis-  
15       agreement pursuant to paragraph (3) of this subsection  
16       and which occurs after the filing of such statement, the  
17       agency shall--

18           “(A) clearly identify any portion of the record  
19       which is disputed, and

20           “(B) provide copies of the statement and, if  
21       the agency deems it appropriate, copies of a concise  
22       statement of the reasons of the agency for not  
23       making the amendments requested, to persons or  
24       other agencies to whom the disputed information has  
25       been disclosed.

1        "(d) LIMITATIONS ON DISCLOSURE.—No agency shall  
2 disclose any individually identifiable record by any means  
3 of communication to any person, or to another agency, unless  
4 such disclosure would be—

5                 "(1) pursuant to a written request by, or with  
6 the prior written consent of, the individual to whom  
7 the record pertains;

8                 "(2) required under section 552 of this title;

9                 "(3) to those officers and employees of the agency  
10 who have a need for the record in the performance of  
11 their duties: *Provided*, That such disclosure is—

12                 "(A) necessary and proper for the performance  
13 of the agency's own mission and functions, and

14                 "(B) a routine use as defined by subsection  
15 (a) (9) of this section;

16                 "(4) to a person other than an officer or employee  
17 of the agency:

18                 *Provided*, That such disclosure is—

19                 "(A) a routine use as defined by subsection  
20 (a) (9) of this section, and

21                 "(B) certified by the designated official under  
22 subsection (j) of this section as meeting the require-  
23 ments in subsection (a) (9) of this section;

24                 "(5) a collateral use as defined by subsection (a)

25                 (10) of this section: *Provided*, That such disclosure

1       is certified by the designated official under subsection  
2           (j) of this section as meeting the requirements in sub-  
3           section (a) (10) of this section;

4               “(6) to the Bureau of the Census for purposes of  
5 planning or carrying out a census or survey or related  
6 activity pursuant to the provisions of title 13;

7           “(7) to the National Archives of the United States  
8       as information which has sufficient historical or other  
9       value to warrant its continued preservation by the  
10      United States Government, or for evaluation by the  
11      Administrator of General Services or his designee to  
12      determine whether the information has such value;

13               “(8) a disclosure of a statistical record in a form  
14               which is not individually identifiable;

15                 “(9) to another agency or to an instrumentality  
16                 of any governmental jurisdiction within or under the  
17                 control of the United States for a civil or criminal law  
18                 enforcement activity if the activity is authorized by  
19                 law, and if the head of the agency or instrumentality  
20                 has made a written request to the agency which main-  
21                 tains the record specifying the particular portion desired  
22                 and the law enforcement activity for which the record  
23                 is sought;

24 " (10) to a person pursuant to a showing of com-

1       any individual: *Provided*, That, upon such disclosure,  
2       notification thereof is transmitted to the last known  
3       address of the individual to whom the record pertains;

4           “(11) to either House of Congress, or, to the extent  
5       of matter within its jurisdiction, any committee or sub-  
6       committee thereof, any joint committee of Congress or  
7       subcommittee of any such joint committee;

8           “(12) to a Member of Congress in response to an  
9       inquiry from that Member which is made at the express  
10      request of—

11           “(A) the individual to whom the record per-  
12       tains and that individual is a constituent of the  
13       Member, or

14           “(B) a relative or legal representative of the  
15       individual to whom the record pertains, and

16           “(i) the requesting relative or legal rep-  
17       resentative of the individual to whom the record  
18       pertains is a constituent of the Member, and

19           “(ii) the individual to whom the record  
20       pertains is incapacitated or otherwise clearly un-  
21       able to request the Member’s assistance himself;

22           “(13) to the Comptroller General, or any of his  
23       authorized representatives, in the course of the perform-  
24       ance of the duties of the General Accounting Office; or

1               “(14) pursuant to the order of a court of com-  
2               petent jurisdiction.

3               “(e) COLLECTION AND MAINTENANCE OF INFORMA-  
4               TION.—

5               (1) Each agency that collects or maintains in-  
6               dividually identifiable records shall—

7               “(A) collect information to the greatest extent  
8               practicable directly from the individual to whom the  
9               information pertains when such information may  
10               affect determinations about an individual's rights,  
11               benefits, or privileges under Federal programs;

12               “(B) take reasonable affirmative steps to enable  
13               individuals from whom it requests information about  
14               themselves or others to decide whether to supply  
15               that information in as informed and uncoerced a  
16               manner as is reasonably possible and, to that end,  
17               the agency shall make available to the individual,  
18               unless the individual has already been notified within  
19               a reasonable period of time prior to the request and  
20               has been offered a retention copy of, the following  
21               information:

22               “(i) the authority which authorizes the  
23               solicitation of the information;

24               “(ii) whether such disclosure is mandatory

1                   or voluntary and the consequences to the in-  
2                   dividual of not providing the information,

3                   “(iii) the principal purpose or purposes for  
4                   which the information is intended to be used,

5                   “(iv) any routine or collateral uses of the  
6                   information which could be reasonably expected  
7                   to influence the individual's decision,

8                   “(v) the scope, techniques, and sources of  
9                   any procedures for verification of the informa-  
10                  tion, and

11                  “(vi) the title, business address, and busi-  
12                  ness telephone number of a responsible agency  
13                  official who can assist the individual in his deci-  
14                  sion or answer any questions which the individ-  
15                  ual may have;

16                  “(C) collect or maintain in its records only  
17                  such information about an individual as is relevant  
18                  and necessary to accomplish a purpose of the agency  
19                  required to be accomplished by statute or by Execu-  
20                  tive order of the President;

21                  “(D) maintain all records which are used by  
22                  the agency in making any determination about any  
23                  individual with such accuracy, timeliness, complete-  
24                  ness, and relevance as is reasonably necessary to  
25                  assure fairness in the determination, although this

1 provision shall not prohibit any agency or compo-  
2 nent thereof which performs as its principal function  
3 any activity relating to the enforcement of criminal  
4 laws, from maintaining unverified or otherwise po-  
5 tentially inaccurate, untimely, incomplete, or irrele-  
6 vant information: *Provided*, That such information  
7 is clearly identified as such to all users or recipients  
8 of that information;

9 " (E) establish reasonable administrative, tech-  
10 nical, and physical safeguards to assure the integrity,  
11 confidentiality, and security of such individually  
12 identifiable records so as to minimize the risk of sub-  
13 stantial harm, embarrassment, inconvenience, or un-  
14 fairness to the individual to whom the information  
15 pertains; and

16 " (F) take reasonable affirmative steps to serve  
17 notice on an individual when any record on such  
18 individual is made available to any person under  
19 compulsory legal process when such process becomes  
20 a matter of public record.

21 (2) No agency, or officer, employee, agent, or  
22 contractor thereof, shall collect or maintain information:

23 " (A) describing the content of any publica-  
24 tion, speech, or other expression of belief or argu-  
25 ment by an individual in the exercise of rights

1            guaranteed by the first amendment, unless such  
2            information is compiled pursuant to an authorized  
3            investigation of the sedition or espionage under sec-  
4            tions 792 through 797 and sections 2381 through  
5            2386 of title 18, or unless such information would  
6            be legally admissible evidence in a criminal prosec-  
7            ution and is compiled pursuant to an authorized  
8            investigation of a violation of the criminal laws of  
9            the United States;

10            “(B) describing the forum in which an indi-  
11            vidual publishes, speaks, or otherwise exercises his  
12            first amendment rights of speech, association, or  
13            religion, unless such information is compiled pur-  
14            suant to an authorized investigation of a violation of  
15            the laws of the United States; or

16            “(C) otherwise describing the way any indi-  
17            vidual exercises his rights guaranteed by the first  
18            amendment, except to the extent that such informa-  
19            tion is limited to collecting and maintaining the  
20            time, place, and observed associations of an indi-  
21            vidual which are compiled pursuant to and in the  
22            course of an authorized investigation of a violation  
23            of the laws of the United States.

24            (3) The provisions of subparagraphs (A), (B),

1 and (C) of paragraph (2) shall not prohibit an agency  
2 from collecting or maintaining—

3                 “(A) a specific item of information which is  
4                 expressly required by statute; or which is expressly  
5                 authorized by the individual to whom it pertains,  
6                 to be collected or maintained, or

7                 “(B) information the collection or mainte-  
8                 nance of which would be a reasonable and proper  
9                 library, bibliographic, abstracting, or similar  
10                 reference function.

11                 “(f) PROPAGATION OF CORRECTIONS.—

12                 “(1) Each agency that maintains individually iden-  
13                 tifiable records shall attempt to assure the accuracy,  
14                 timeliness, and completeness of the records maintained  
15                 by the sources and the prior recipients of the information  
16                 in its records by taking reasonable affirmative steps to  
17                 notify such sources and prior recipients who have, within  
18                 a reasonable period of time, provided information to, or  
19                 received information from, an individually identifiable  
20                 record maintained by the agency of all—

21                 “(A) corrections of that individually identifi-  
22                 able record made pursuant to subsection (c) (1)  
23                 (B) (i) of this section;

24                 “(B) statements of disagreement regarding

1           information contained in that individually identifi-  
2           able record made pursuant to subsection (c) (3)  
3           of this section, together with, if such exists, the cor-  
4           responding statement of the agency's position made  
5           pursuant to subsection (e) (4) (B) of this section;  
6           and

7           “(C) corrections of erroneous information con-  
8           tained in that individually identifiable record which  
9           are normal updates, changes, or modifications of  
10          that information made in the performance of the  
11          agency's functions, provided that—

12           “(i) such corrections are made pursuant  
13           to subsection (e) (1) (D) of this section,

14           “(ii) such corrections could be reasonably  
15          expected to affect the outcome of any deter-  
16          mination on the individual if known to either  
17          the sources or prior recipients of the erroneous  
18          information, and

19           “(iii) the sources and prior recipients of the  
20          erroneous information could not be reasonably  
21          expected by the agency to otherwise become  
22          aware of such corrections through normal  
23          means.

24           “(2) The agency shall not be required to notify,

1 pursuant to subparagraph (A), (B), or (C) of para-  
2 graph (1) of this subsection—

3           “(A) a prior recipient who received the  
4 erroneous information pursuant to section 552 of  
5 this title, or

6           “(B) a source of the erroneous information  
7 who provided the information as an individual  
8 acting on his own behalf and not in an official ca-  
9 pacity as a representative, officer, employee, or  
10 agent of an agency or other organization.

11           “(3) Notwithstanding the provisions of paragraph  
12 (2) of this subsection, the agency shall also take rea-  
13 sonable affirmative steps to notify any person specifically  
14 named by the individual to whom they pertain of cor-  
15 rections or statements of disagreement or agency posi-  
16 tion as enumerated in subparagraph (A), (B), or (C)  
17 of paragraph (1) of this subsection.

18           “(g) FAIRNESS IN DETERMINATIONS.—In addition  
19 to the provisions of subsection (e) (1) (D) of this section,  
20 agencies shall take reasonable affirmative steps to reconsider  
21 any determinations which were made on the basis of er-  
22 roneous information after receipt of—

23           “(1) a correction made by an individual pursuant  
24 to subsection (c) (1) (B) (i), or

1           “(2) a correction or a statement of disagreement  
2       or agency position which has been propagated pursuant  
3       to subsection (f) of this section.

4           “(h) GENERAL NOTICE OF AGENCY SYSTEMS, POL-  
5       ICIES, AND PRACTICES.—

6           “(1) Each agency that maintains individually iden-  
7       tifiable records shall publish in the Federal Register at  
8       least annually a notice which describes in detail, in  
9       terms of systems and subsystems that most accurately re-  
10      flects the context or manner in which the agency uses  
11      the information, the existence and character of such sys-  
12      tems and subsystems, which notice shall include—

13           “(A) the name and location of each system or  
14       subsystem, as well as any substantially similar or  
15       derivative systems or subsystems;

16           “(B) the authority for the maintenance of the  
17       system or subsystem;

18           “(C) the categories of individuals on whom  
19       records are maintained in the system or subsystem;

20           “(D) the categories of information or data  
21       items maintained in the system or subsystem;

22           “(E) each use or disclosure of the records con-  
23       tained in the system or subsystem, including the  
24       categories of users and the purposes of such use or  
25       disclosure;

1                 “(F) the policies and practices of the agency  
2                 regarding storage, retrievability, access controls, re-  
3                 tention, and disposal of the information maintained  
4                 in the system or subsystem;

5                 “(G) the title, business address, and business  
6                 telephone of the agency official responsible for the  
7                 system or subsystem;

8                 “(II) the agency procedures whereby an indi-  
9                 vidual can request:

10                 “(i) access to records pertaining to him in  
11                 the system or subsystem, and

12                 “(ii) amendment of such records; and

13                 “(I) the categories of sources of information  
14                 in the system, except to the extent that material so  
15                 published would be information to which an indi-  
16                 vidual would be denied access under subsections (b)  
17                 (3) (A) and (b) (3) (B).

18                 “(2) The Office of the Federal Register shall an-  
19                 nually compile and publish the notices published pur-  
20                 suant to paragraph (1) of this subsection and the rules  
21                 published pursuant to subsection (j) of this section in  
22                 a form available to the public at low cost and which  
23                 is indexed, arranged, or otherwise prepared to enable  
24                 ease of use and reference by the public.

25                 “(i) RIGHTS OF PARENTS AND LEGAL GUARDIANS.—

1 For the purposes of this section, the parent of any minor, or  
2 the legal guardian of any individual who has been declared  
3 to be incompetent due to physical or mental incapacity or  
4 age by a court of competent jurisdiction, may act on behalf  
5 of the individual.

6       “(j) AGENCY IMPLEMENTATION.—

7           “(1) The head of the agency shall designate one  
8 official with the authority to oversee the agency's im-  
9 plementation of this section, and such designated official  
10 shall—

11           “(A) be the head of an office designated or  
12 created by the agency head, with as many com-  
13 ponents, field offices, or other supporting structures  
14 and staff as the agency head deems necessary;

15           “(B) issue such instructions, guidelines, and  
16 standards, and make such determinations, as are  
17 necessary for the implementation of this section;

18           “(C) take reasonable affirmative steps to assure  
19 that all agency employees and officials responsible  
20 for the collection, maintenance, use, and dissemina-  
21 tion of individually identifiable records are aware  
22 of the requirements of this section; and

23           “(i) the instructions, guidelines, standards,  
24 and determinations, issued pursuant to subparagraph

1                 “(ii) the rules promulgated pursuant to  
2                 paragraph (2) of this subsection, and  
3                 “(iii) the penalties for noncompliance.

4                 “(2) In order to carry out the provisions of this  
5                 section, each agency that collects and maintains indi-  
6                 vidually identifiable records shall promulgate rules, in  
7                 accordance with the requirements (including general  
8                 notice) of section 553 of this title, which shall—

9                 “(A) define reasonable times, places, and re-  
10                 quirements, for identifying an individual who re-  
11                 quests access to records pertaining to him before the  
12                 agency shall make those records available to the  
13                 individual;

14                 “(B) establish procedures for the disclosure to  
15                 an individual upon his request for records pertaining  
16                 to him, including special procedures, if deemed nec-  
17                 essary, for the disclosure of information which would  
18                 adversely affect the health of the individual to whom  
19                 the records pertain or the safety of any other indi-  
20                 vidual;

21                 “(C) establish procedures for reviewing a re-  
22                 quest from an individual concerning the amendment  
23                 of any records pertaining to that individual, for mak-  
24                 ing a determination on the request, for an appeal  
25                 within the agency of an initial adverse decision.

1           mination, and for whatever additional means may  
2           be necessary for each individual to be able to exer-  
3           cise fully his rights under this section; and

4           “(D) establish fees to be charged, if any, to any  
5           individual for making copies of records pertaining  
6           to him, excluding the cost of any search for and  
7           review of the records.

8           “(k) CIVIL REMEDIES.—

9           “(l) Whenever any agency:

10           “(A) makes a determination under subsection  
11           (c) of this section not to amend an individual's  
12           record in accordance with his request, or fails to  
13           make such review in conformity with that sub-  
14           section;

15           “(B) refuses to comply with an individual  
16           request under subsection (b) (1) of this section;

17           “(C) fails to maintain any record concerning  
18           any individual with such accuracy, relevance, time-  
19           liess, and completeness as is necessary to assure  
20           fairness in any determination relating to the qualifi-  
21           cations, character, rights, or opportunities of, or  
22           benefits to, the individual that may be made on the  
23           basis of such record, and consequently a determina-  
24           tion is made which is adverse to the individual; or

25           “(D) fails to comply with any other provision

1           of this section, or any rule promulgated thereunder,  
2       the individual may bring a civil action against the  
3       agency, and the district courts of the United States shall  
4       have jurisdiction in the matters under the provisions of  
5       this subsection.

6           “(2) (A) In any suit brought under the provisions  
7       of paragraph (1) (A) of this subsection, the court may  
8       order the agency to amend the individual's record in  
9       accordance with his request or such other way as the  
10      court may direct. In such a case, the court shall deter-  
11      mine the matter de novo.

12           “(B) The court may assess against the United  
13       States reasonable attorney fees and other litigation costs  
14       reasonably incurred in any case under this paragraph  
15       in which the complainant has substantially prevailed.

16           “(3) (A) In any suit brought under the provisions  
17       of paragraph (1) (B) of this subsection, the court may  
18       enjoin the agency from withholding the records, or the  
19       accounting of the uses and disclosures thereof, and order  
20       the production to the complainant of any agency rec-  
21       ords, or the accounting of the uses and disclosures thereof,  
22       improperly withheld from him. In such a case, the court  
23       shall determine the matter de novo. The court may ex-  
24       amine the contents of any agency records, or any ac-

1       to determine whether the records or any portion thereof,  
2       or any accounting of the uses and disclosures thereof,  
3       may be withheld under any of the exemptions set forth  
4       in subsection (b) (3) of this section, and the burden  
5       is on the agency to sustain its action.

6           “(B) The court may assess against the United  
7       States reasonable attorney fees and other litigation costs  
8       reasonably incurred in any case under this paragraph in  
9       which the complainant has substantially prevailed.

10          “(4) In any suit brought under the provisions of  
11       paragraph (1) (C) or (1) (D) of this subsection in  
12       which the court determines that the agency acted in a  
13       manner which was intentional or willful, the court may  
14       order the agency to act in a manner consistent with this  
15       section, and, in addition, the United States shall be liable  
16       to the individual in an amount equal to the sum of:

17           “(A) special and general damages sustained  
18       by the individual as a result of the failure under  
19       paragraph (1) (C) or (1) (D) of this subsection,  
20       but in no case shall a person entitled to recovery  
21       receive less than the sum of \$1,000 or more than the  
22       sum of \$10,000 in excess of the dollar amount of  
23       any special damages; and

24           “(B) the costs of the action together with rea-  
25       sonable attorney fees as determined by the court.

1           “(5) An action to enforce any liability created un-  
2         der this section may be brought in the district court of  
3         the United States in the district in which the complain-  
4         ant resides, or has his principal place of business, or in  
5         which the agency records are situated, or in the Dis-  
6         trict of Columbia, without regard to the amount in con-  
7         troversy, within 2 years from the date on which the  
8         cause of action arises, except that where an agency has  
9         materially and willfully misrepresented any information  
10        required under this section to be disclosed to an individ-  
11        ual and the information so misrepresented is material to  
12        the establishment of the liability of the agency to the  
13        individual under this section, the action may be brought  
14        at any time within 2 years after discovery by the indi-  
15        vidual of the misrepresentation. Nothing in this section  
16        shall be construed to authorize any civil action by reason  
17        of any injury sustained as the result of a disclosure of a  
18        record prior to the effective date of this section.

19           “(1) CRIMINAL PENALTIES.—

20           “(1) Any officer or employee of an agency, who  
21         by virtue of his employment or official position, has  
22         possession of, or access to, agency records which contain  
23         individually identifiable information the disclosure of  
24         which is prohibited under this section or by rules or  
25         regulations established thereunder, and who knowing

1       that disclosure of the specific material is so prohibited,  
2       willfully discloses the material in any manner to any  
3       person or agency not entitled to receive it, shall be guilty  
4       of a misdemeanor and fined not more than \$5,000.

5           “(2) Any officer or employee of any agency who  
6       willfully maintains any collection or grouping of records  
7       without meeting the notice requirements of subsection  
8       (h) (1) of this section shall be guilty of a misdemeanor  
9       and fined not more than \$5,000.

10          “(3) Any person who knowingly and willfully  
11       requests or obtains any record concerning an individual  
12       from an agency under false pretenses shall be guilty of  
13       a misdemeanor and fined not more than \$5,000.

14          “(m) GOVERNMENT CONTRACTORS AND GRANTEES.—

15           “(1) Any contractor or recipient of a Federal grant,  
16       or any subcontractor thereof, who performs any func-  
17       tion on behalf of a Federal agency which requires the  
18       contractor or grantee to maintain individually identifi-  
19       able records shall be subject to the provisions of this  
20       section, except that this provision shall not apply to:

21           “(A) the employment, personnel, or other  
22       administrative records which the contractor or  
23       grantee maintains as a necessary aspect of support-  
24       ing the performance of the contract or grant but

1           which bear no other relation to the performance  
2           of the contract or grant,

3           “(B) individually identifiable records:

4           “(i) which are neither required nor im-  
5           plied by the terms of the contract or grant,

6           “(ii) for which no representation of Fed-  
7           eral sponsorship or association is made, and

8           “(iii) which will not be submitted or other-  
9           wise provided to the Federal agency with which  
10          the contract or grant is established.

11          “(2) The agency with which the contract or grant  
12          is established shall, consistent with its authority, be  
13          responsible for insuring that the contractor or grantee  
14          complies faithfully with the provisions of this section.

15          “(3) For any contracts or grants agreed to on or  
16          after the effective date of this section to which subsec-  
17          tion (m) (1) of this section applies:

18           “(A) any such contractor or grantee, or any  
19           employee of such contractor or grantee, shall, for  
20           purposes of the criminal penalties of subsection (l)  
21           of this section, be considered to be an employee of  
22           the agency;

23           “(B) any such contractor or grantee shall, for  
24           purposes of the civil remedies of subsection (k) of

1           this section, be considered to be an agency, except  
2           that the damages, attorney fees, and litigation costs  
3           under subsections (k) (2) (B), (k) (3) (C), and  
4           (k) (4) shall be assessed against the contractor or  
5           grantee instead of against the United States; and

6           “(C) no official or employee of any agency of  
7           the United States shall include, or authorize to be  
8           included, in any such contract or discretionary grant  
9           any provision indemnifying the contractor or grantee  
10          from the civil remedies of subsection (k) of this  
11          section.

12          “(n) ARCHIVAL RECORDS.—

13          “(1) Each agency record which is accepted by the  
14          Administrator of General Services for storage, process-  
15          ing, and servicing in accordance with section 3103 of  
16          title 44 shall, for the purposes of this section, be con-  
17          sidered to be maintained by the agency which deposited  
18          the record and shall be subject to the provisions of this  
19          section. The Administrator of General Services shall not  
20          disclose the record except to the agency which main-  
21          tains the record, or under rules established by that agency  
22          which are not inconsistent with the provisions of this  
23          section.

24          “(2) Each agency record pertaining to an identifi-  
25          able individual which was transferred to the National

1 Archives of the United States as a record which has suffi-  
2 cient historical or other value to warrant its continued  
3 preservation by the United States Government, prior to  
4 the effective date of this section, shall, for the purposes  
5 of this section, be considered to be maintained by the  
6 National Archives and shall not be subject to the provi-  
7 sions of this section, except that a statement generally  
8 describing such records (modeled after the requirements  
9 relating to records subject to subsections (h) (1) (A)  
10 through (h) (1) (G) of this section) shall be published  
11 in the Federal Register.

12 “(3) Each agency record pertaining to an identifi-  
13 able individual which is transferred to the National  
14 Archives of the United States as a record which has  
15 sufficient historical or other value to warrant its continued  
16 preservation by the United States Government, on or  
17 after the effective date of this section, shall, for the pur-  
18 poses of this section, be considered to be maintained by  
19 the National Archives and shall be exempt from the re-  
20 quirements of this section except subsections (h) (1)  
21 (A) through (h) (1) (G) of this section.

22 (o) REPORT ON NEW SYSTEMS.—Each agency shall  
23 provide adequate advance notice to Congress and the Office  
24 of Management and Budget of any proposal to establish or  
25 alter any system of records in order to permit an evaluation

1 of the probable or potential effect of such proposal on the  
2 privacy and other personnel or property rights of individuals  
3 or the disclosure of information relating to such individuals,  
4 and its effect on the preservation of the constitutional prin-  
5 ciples of federation and separation of powers.

6 (p) ANNUAL REPORT.—The President shall submit to  
7 the Speaker of the House and the President of the Senate,  
8 by June 30 of each calendar year, a consolidated report,  
9 separately listing for each Federal agency the number of rec-  
10 ords contained in any system of records which were ex-  
11 empted from the application of this section under the  
12 provisions of subsection (b) (3) of this section during the  
13 preceding calendar year, and the reasons for the exemp-  
14 tions, and such other information as indicates efforts to  
15 administer fully this section.

16 "(q) EFFECT OF OTHER LAWS.—

17 "(1) Whenever an agency receives a request for  
18 access to records which could be processed either under  
19 the provisions of section 552 of this title or under the  
20 provisions of this section, the agency shall process such  
21 request under the provisions of this section, except that  
22 in no instance shall the requesting individual receive less  
23 information than he would receive if the request were  
24 processed under section 552 of this title.

1           “(2) No agency shall rely upon any exemption  
2        contained in section 552 of this title to withhold from  
3        an individual any record which is otherwise accessible  
4        to the individual under the provisions of this section.

5           “(r) MAILING LISTS.—An individual's name and ad-  
6        dress may not be sold or rented by an agency unless such  
7        action is specifically authorized by law. This provision shall  
8        not be construed to require the withholding of names and  
9        addresses otherwise permitted to be made public.”.

10          SEC. 2. Section 552(a)(3) of title 5, United States  
11        Code, is amended by striking out “Except” and inserting  
12        in lieu thereof “Except as provided under section 552a(q)  
13        of this title, and except”.

95TH CONGRESS  
1ST SESSION      H.R. 8279

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A BILL

To amend the Privacy Act of 1974.

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By Mr. GOLDWATER and Mr. KOCH

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JULY 13, 1977

Referred to the Committee on Government Operations